

STATE OF MICHIGAN  
IN THE SUPREME COURT

(On Appeal from the Michigan Court of Appeals and  
the Circuit Court for the County of Oakland)

BRIAN J. PERRY,

Plaintiff-Appellee,

vs.

Supreme Court No: 129943

COA No: 254121

L.C. No: 03-053489-NI

GOLLING CHRYSLER PLYMOUTH  
JEEP, INC., a Michigan Corporation,

Defendant-Appellant.

SULLIVAN, WARD, ASHER & PATTON, P.C.

**DEFENDANT-APPELLANT GOLLING CHRYSLER PLYMOUTH JEEP, INC.'S**  
**REPLY BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL**

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**TABLE OF CONTENTS**

INDEX OF AUTHORITIES .....	ii
INDEX OF AUTHORITIES .....	ii
STATEMENT OF ISSUES PRESENTED .....	iii
STATEMENT OF AMICUS CURIAE SUPPORT .....	1
REPLY ARGUMENT I .....	2
DEFENDANT GOLLING CANNOT BE HELD LIABLE UNDER THE OWNERSHIP LIABILITY STATUTE WHERE OWNERSHIP OF THE SUBJECT MOTOR VEHICLE EFFECTIVELY TRANSFERRED TO THE VEHICLE'S PURCHASER UPON THE EXECUTION OF THE APPLICATION OF TITLE BY THE PARTIES' SIGNATURES.....	2
CONCLUSION .....	4

**INDEX OF AUTHORITIES**

Cases:

Goins v Greenfield Jeep Eagle,  
447 Mich 1 (1995) ..... 1, 2, 3

Griffith v State Farm Mutual Auto Ins Co,  
472 Mich 521, 533 (2005) ..... 2

Statutes:

MCL 257.217(4)..... 3

MCL 257.233(9)..... 1, 3

MCL 257.234 ..... 3

MCL 257.240 ..... iii

MCL 324.80307(1)..... 3

MCL 324.81109(1)..... 3

**STATEMENT OF ISSUES PRESENTED**

- I. DID TITLE AND OWNERSHIP OF THE SUBJECT MOTOR VEHICLE TRANSFER TO KSENIA NICHOLS WHEN THE PARTIES TO THE SALES CONTRACT SIGNED THE APPLICATION FOR TITLE?**

Defendant-Appellant answers “Yes.”

The Michigan Court of Appeals said “No.”

The Trial Court answered “Yes.”

Plaintiff-Appellee answers “No.”

- II. DOES THE RELEASE OF THE TORTFEASOR DRIVER OF AN AUTOMOBILE OPERATE TO RELEASE THE OWNER OF THE AUTOMOBILE OF ITS DERIVATIVE LIABILITY UNDER MICHIGAN’S OWNERS LIABILITY ACT, MCL § 257.240?**

Defendant-Appellant answers “Yes.”

Plaintiff-Appellee answers “No.”

The Trial Court and Court of Appeals answer “No.”

## **STATEMENT OF AMICUS CURIAE SUPPORT**

The primary issue raised in this appeal is whether the “execution” of a motor vehicle Application for Title is incomplete and does not result in a transfer of ownership from the dealer to the purchaser until the parties sign the Application and the dealer then mails the document to the Secretary of State under MCL 257.233(9). Following dicta set forth in Goins v Greenfield Jeep Eagle, 447 Mich 1 (1995), the Michigan Court of Appeals below held that “execution” was indeed incomplete until the document was both signed by the parties and mailed to the Secretary of State.

Since the filing of Defendant’s Application for Leave to Appeal, the Michigan Automobile Dealers Association and the Detroit Automobile Dealer’s Association have both filed proposed Amicus Curiae Briefs to support the position of the Defendant that the Court of Appeals below erroneously relied upon the dicta in Goins in concluding that Golling remained an owner of the motor vehicle until the signed Application for Title was mailed to the Secretary of State. These Amicus Briefs join in Defendant’s request that the Michigan Supreme Court grant affirmative appellate relief in this action to overrule its dicta in Goins as erroneous, and further address and demonstrate the concerns of and negative consequences to the motor vehicle dealership industry arising from the ruling in this action that a dealer remains an owner of the vehicle even after the vehicle is purchased and the purchaser takes possession until the subsequent time that the Application for Title is mailed to the secretary of state.

The Michigan Supreme Court is requested to give strong consideration to the legal arguments and discussions set forth in the Amicus Briefs as demonstrating the critical need for reversal of the Court of Appeals’ Opinion below and an overruling of the Goins dicta erroneously determined to be controlling in this action by the Court of Appeals.

## REPLY ARGUMENT I

### DEFENDANT GOLLING CANNOT BE HELD LIABLE UNDER THE OWNERSHIP LIABILITY STATUTE WHERE OWNERSHIP OF THE SUBJECT MOTOR VEHICLE EFFECTIVELY TRANSFERRED TO THE VEHICLE'S PURCHASER UPON THE EXECUTION OF THE APPLICATION OF TITLE BY THE PARTIES' SIGNATURES.

In its Brief in Response to Defendant's Application for Leave to Appeal, Plaintiff merely summarizes the existing caselaw addressing various transfer of ownership issues in a number of factual contexts. Plaintiff completely ignores and otherwise fails to address the controlling argument that the Court of Appeals erroneously applied the dicta of Goins, *supra*, to define the statutory term "execution" as requiring the mailing of the document to the Secretary of State. Otherwise stated, the Plaintiff has briefed this issue as if the Michigan Supreme Court were required to apply and enforce the dicta of Goins, while the Supreme Court is simultaneously being requested by Defendant and its amici curiae to exercise its powers to overturn that dicta and reverse the Court of Appeals' erroneous reliance thereupon. Due to the Plaintiff's erroneous failure to recognize the Supreme Court's powers in this regard, Defendant's Reply need not be overly elaborative.

The Michigan Supreme Court has recently enforced the doctrine of *noscitur a sociis*, that a statutory word or phrase is given meaning by its context or setting. Griffith v State Farm Mutual Auto Ins Co, 472 Mich 521, 533 (2005). Likewise, in Griffith, the Supreme Court again resorted to the dictionary definition of commonly used terms which are not otherwise defined by the statute in question. *Id.* This is consistent with the approach of the Defendant advocated in its current Application. (See: Defendant's Application for Leave to Appeal, p 9; Amicus Brief of Michigan Automobile Dealers' Association, pp 4-5).

The context of the legislature's use of the word "execution" within MCL 257.233(9), supra, indeed requires that the term's definition be consistent with its dictionary definition which requires nothing more than the parties' signatures upon the document to render it effective.

As was initially argued in Defendant's current Application, the legislature's use of the word "execution" in this statute must be construed consistent with the related statutes governing a dealer's sale of a motor vehicle and the corresponding timing of the transfer of ownership. In this regard, the legislature, in several related statutes, utilized the distinguishing verb tenses of "to mail," "to apply," "to file," and "to present" when it intends to require submission of pertinent documents to the Michigan Secretary of State's office. See, e.g., MCL 257.217(4) [dealer "shall apply to the Secretary of State for a new title" within 15 days following completion of sale], MCL 257.234 [requiring "mailing" or "delivering" of Certificate of Title to purchaser within specified time periods]. Compare MCL 324.80307(1) [requiring Application for Title for watercraft to be "filed with the Secretary of State within 15 days after the date of purchase or transfer."], MCL 324.81109(1) [same requirement regarding sale of off road recreational vehicle].

The Goins dicta and the Michigan Court of Appeals below erroneously failed to recognize that when the Michigan legislature intends to require threshold acts of "mailing," "filing" or "applying" in this context, it specifically utilizes those common words to unambiguously express its intent. Goins' statement of dicta that the act of "executing" the Application for Title requires signature plus mailing, filing or applying constitutes an impermissible rewriting of the statute and is contrary to both the plain meaning of that term and is contrary to the context in which the statutory requirement is presented.

**CONCLUSION**

For the foregoing reasons, Defendant-Appellant Golling-Chrysler Plymouth respectfully requests that this Honorable Court reinstate the trial court's order of February 9, 2004 granting Defendant's Motion for Summary Disposition and vacate the Michigan Court of Appeals' Opinion of October 11, 2005.

Respectfully submitted,

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